



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-146620-13]

RIN 1545-BL92

Authority for Voluntary Withholding on Other Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document contains proposed regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. In the Rules and Regulations of this issue of the **Federal Register**, the IRS is also issuing temporary regulations to allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of those temporary regulations also generally serves as the text of these proposed regulations. The regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER THIS DOCUMENT IS FILED WITH THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-146620-13), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-146620-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-146620-13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Linda L. Conway-Hataloski at (202) 317-6798; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-5179 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also

authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)-1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

### **Explanation of Provisions**

The proposed regulations amend the headings to paragraphs (a) and (b) of §31.3402(p)-1 to clarify that those paragraphs apply to voluntary withholding agreements between an employer and employee. Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** also amend the Employment Tax Regulations (26 CFR part 31) under section 3402(p). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these

regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the **Addresses** heading in this preamble. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 31.3402(p)-1 is amended by:

1. Revising the headings of paragraphs (a) and (b).
2. Removing the language “3402(b)” in the first sentence and “3402(p)” in the third sentence and adding “3402(p)(3)(A)” in its place as it appears in paragraph (a) and the five places “3402(p)” as it appears in paragraph (b).
3. Adding paragraphs (c) and (d).

The revisions and additions read as follows:

#### §31.3402(p)-1 Voluntary Withholding Agreements.

(a) Employer-employee agreement. \* \* \*

\* \* \* \* \*

(b) Form and duration of employer-employee agreement. \* \* \*

\* \* \* \* \*

(c) [The text of this paragraph (c) is the same as the text of paragraph (c) of §31.3402(p)-1T published elsewhere in this issue of the **Federal Register**].

(d) [The text of this paragraph (d) is the same as the text of paragraph (d)(1) of §31.3402(p)-1T published elsewhere in this issue of the **Federal Register**].

John Dalrymple

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013-28529 Filed 11/27/2013 at 8:45 am;

Publication Date: 11/29/2013]